

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 888 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JYOTI DIPAKSINGH RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MR JITENDRA M PATEL for Petitioner

Mr.K.G. Sheth, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. Appellant, who is original plaintiff, by filing this appeal under Section 9 of the Ahmedabad City Civil Court Act, 1961, has challenged judgment and order dated September 21, 1978 passed by learned Judge, City Civil Court, Ahmedabad, in Civil Suit No.2840 of 1974.

2. The appellant was appointed as a Social Worker in the Government Dispensary by order dated May 1, 1968. From April 30, 1974, she was serving as a Social Worker in Kubernagar Government Dispensary. She had remained on leave on various dates due to valid cause and for which she had submitted leave reports. On May 30, 1974, a statutory notice was given by the appellant through her advocate as a result of which the respondents were irritated towards the appellant. The appellant was served with a notice dated June 13, 1974, to show cause as to why disciplinary action should not be taken against her for remaining on leave without getting it sanctioned. It is alleged by the appellant that, without holding any enquiry, impugned order dated September 26, 1974 was passed treating the appellant's leave of 120 days as willful absence, with penalty of stoppage of two increments. The appellant alleged that the impugned order dated September 26, 1974 was passed in contravention of principles of natural justice. The appellant, therefore, filed Civil Suit No.2840 of 1974 in the City Civil Court, Ahmedabad, for declaration and injunction challenging impugned order dated September 26, 1974.

3. The respondents filed written statement Exh.10, inter alia, contending that the Civil Court had no jurisdiction to entertain and try the suit filed by the appellant in view of the provisions of the Gujarat Civil Services Tribunal Act, 1972 ('Act' for short). It was averred that the appellant was irregular in attending the office and was irresponsible to her job and she used to remain absent without any prior intimation for which she was given written instructions by her superiors. It was further averred that the appellant had not submitted any leave report to the Medical Officer incharge of the Dispensary for several days when she had remained absent. It was further contended that the appellant had remained absent on duty from October 1973 to April 1974 for 120 days. It was contended that, as the appellant had remained absent without submitting any leave report and getting it sanctioned, the said period of her absence was treated as 'leave without pay'. It was further contended that punishment imposed by the impugned order of withholding increment was passed under Rule 6(2) of Gujarat Civil Services (Conduct) Rules, 1971, which was minor punishment.

4. The trial court, on the basis of rival pleadings of the parties, raised issues at Exh.26. The parties had not led any oral evidence, but mainly relied upon

documentary evidence. The trial court, after appreciating documentary evidence and arguments advanced by the learned counsel for the appellant and the respondents, came to the conclusion that the civil court had no jurisdiction over the impugned order in so far as it reduces the pay of the appellant. With regard to other reliefs claimed by the appellant in her suit, the trial court held that the suit was bad for want of notice under Section 80 of the Code of Civil Procedure. In view of the aforesaid findings, the trial court dismissed the appellant's suit, which has given rise to filing of the present appeal.

5. Learned counsel for the appellant submitted that the trial court had erred in not appreciating that the punishment imposed on the appellant did not fall within Schedule to the Act and, therefore, the suit was maintainable. It is contended that the impugned order only amounts to withdrawal of increment and was not an order of reduction of pay. Learned counsel for the appellant, therefore, submitted that provisions of Section 11 of the Act were not satisfied and the appellant could not have filed appeal before the Tribunal under that provision.

6. Learned Assistant Government Pleader, Mr. K.G. Sheth, has submitted that the suit filed by the appellant was clearly barred by law in view of provisions of Sections 11, 16 and 21 of the Act. Learned Assistant Government Pleader further contended that even otherwise the suit was not maintainable in view of the fact that no notice under Section 80 of the Code of Civil Procedure was served on the respondents before filing of the suit.

7. The submission of learned counsel for the appellant that stoppage of two increments was not an order of reduction of pay and, therefore, the appellant could not have filed appeal under Section 11 of the Act, deserves to be rejected. The order of stoppage of two increments, obviously, is an order reducing pay of the appellant and it would fall under item No.2 of the Schedule to the Act, over which, the Tribunal had only jurisdiction. Under Rule 18 of the Gujarat Civil Services (Discipline And Appeal) Rules, 1971, the appellant could have filed appeal against the impugned order. Admittedly, the Tribunal was constituted on February 15, 1977, and, therefore, the appellant could have filed appeal within period of one month from the date of constitution of the Tribunal. Therefore, in my view, the Civil Court had no jurisdiction to entertain the suit with regard to stoppage of two increments as

contained in the impugned order dated September 26, 1974. Therefore, the trial court had not erred in holding that it had no jurisdiction to entertain suit in so far as punishment of stoppage of two increments contained in the impugned order Exh.37 was concerned.

8. Admittedly, before filing of the suit, the appellant had not served notice under Section 80 of the Code of Civil Procedure on the respondents. Even if other punishment imposed on appellant treating absence of 120 days from duty as 'leave without pay' can be challenged in the Civil Court, yet, in absence of statutory notice under Section 80 of the Code of Civil Procedure, the suit was not maintainable. Learned counsel for the appellant submitted that the appellant had served notice dated May 30, 1974 before filing of the suit and, therefore, there was valid notice served on the respondents before filing of the suit and the trial court has erred in not appreciating the fact that the appellant had served valid notice under Section 80 of the Code of Civil Procedure before filing of the suit. The submission of learned counsel for the appellant deserves to be rejected. The impugned order was passed by the respondents on September 27, 1974 and when statutory notice was served on May 30, 1974, no cause of action for filing suit had arisen. Therefore, notice dated May 30, 1974 cannot come to the rescue of the appellant because the impugned order was passed on September 27, 1974. The trial court had rightly held that in absence of any statutory notice under Section 80 of the Code of Civil Procedure, the suit was not maintainable over other part of the impugned order Exh.37 dated September 27, 1974.

9. These were the only contentions raised by learned counsel for the appellant and I do not find any merit in those contentions raised by the appellant.

10. As a result of foregoing discussion, the appeal fails and is dismissed with no order as to costs.

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(swamy)